

CRIMINAL PROSECUTION AND ITS EFFECT ON CRIME RATE *

INTRODUCTION

The Basic obligation of Criminal Justice System is two fold one is Control of Crime rate, second is Protection of Individual rights invaded. The Role of the Prosecutions is very crucial in dispensation of Criminal Justice. Effective prosecution enhances the conviction rate which in turn reduces crime rate, it equally guards the innocent from false complaints, fairness of trial does not mean that the trial has to be fair to the accused alone equally important is that the trial is fair to the person aggrieved or whose near and dear ones are aggrieved¹ in other words, it is a machine that separates falsehood from truth and places the final product before the Judge to deliver the conclusive report in the form of a Judgment. Now a days the concept of crime has become a fashion due to decrease of conviction rate and lower gravity of punishments rooted from improper prosecution. The existing scenario leads a threat to the human survival, for their free and independent lives as guaranteed under the Constitution. The present paper deals with the conviction rate by taking many components of crime statistics and established an inverse relation between the rate of crime and participative role of victim in criminal proceedings.

ARGUMENTS: In general, the State conducts prosecution. The role of the Victim is very limited and confined to tender testimony in trial only. The lacuna of investigation conducted by police though observed by the victim, He/ She can't bring the facts to the notice of Court directly because the prosecutor plays an intermediary role between the Court and Victim as per law he is an unbiased person and Victim's grievance is addressed to the Court by him only. The Victim suffers from crime in one side, in other side that the system what he/she relied upon could not address his grievance effectively to the court of Law, such an improper prosecution causes more intense pain than that of real crime, in such a situation he would be sandwiched between these two problematic spheres and finally make him a re-affected sufferer with an un protecting machinery in a helpless society.

RESULTS & DISCUSSION : One decade Statistics of Indian Penal Code (IPC) crimes from 2004 to 2014 were taken from National Crime Bureau Record (NCBR)² and analyzed with special reference to total number of cases trialed including previous years, cases withdrawn (or) compounded, cases convicted, cases acquitted, total number of cases left un- tried at the end of the year, and crime rate. The observations of average crime rate of one decade does not exceed 50% of the total IPC crimes reported which is considered to be a remarkable fall from 62.7% in 1972³. The acquittals do not result on the strength of defense but on the weakness of prosecution.

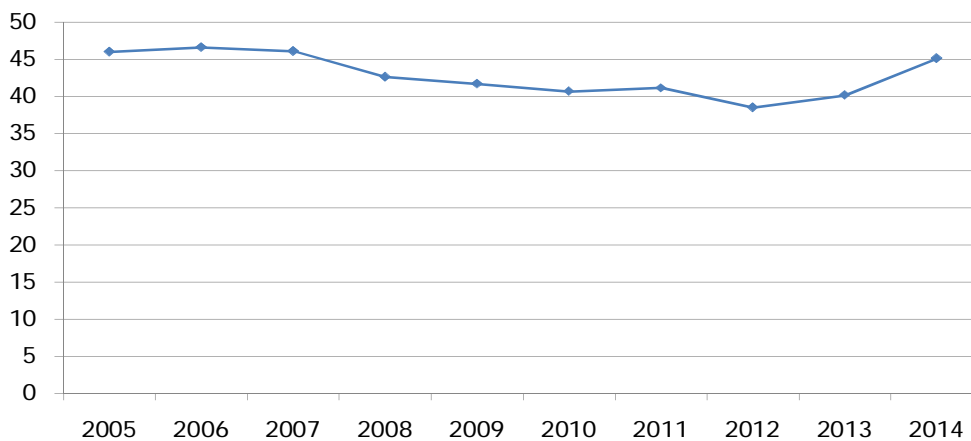
TABLE 1.1 : ONE DECADE IPC CRIMES

S.No.	Year	Total	Cases	Convicted	Acquitted	Total	Total No.of	Conviction
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		No.of Cases for Trial including pending from Previous year (IPC)	compounded (or) withdrawn				Cases un trialed at the end of Year (IPC)	Rate
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
1	2005	7940350	229719	687749	807221	1494970	8200533	46.0042
2	2006	8200537	220685	717324	821586	1538910	8456937	46.61247
3	2007	8456932	220178	701033	819996	1521029	8882412	46.08939
4	2008	7833842	155463	448475	604148	1052623	6625756	42.60547
5	2009	8130053	146300	427655	598126	1025781	6957972	41.69067
6	2010	8549655	150332	464128	676903	1141031	7258302	40.6762
7	2011	8939161	164920	497996	713229	1211225	7563016	41.11507
8	2012	9328085	187539	482260	769878	1252138	7888408	38.51492
9	2013	9781426	194994	518126	772022	1290148	8296284	40.1602
10	2014	7974977	131355	605144	736242	1341386	8457884	45.11334
	avg.	8513502	180148.5	554989	731935.1		7858750	42.85819

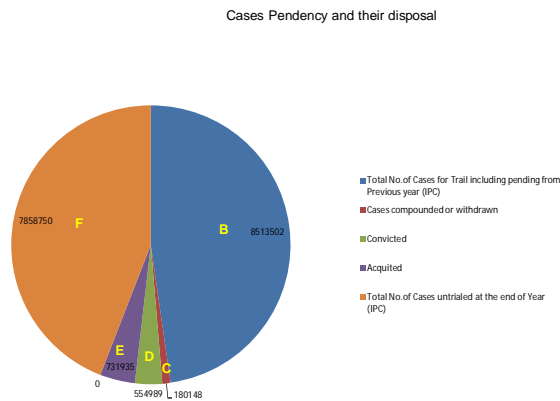
CONVICTION RATE OF IPC CRIMES FOR ONE DECADE



GRAPH 1.1

Graph No: 1.1 is drawn by taking years on X-axis and crime rate on Y-axis. The values do not reach even 50% as an average of 10 years. This value is a sudden fall when compared to the statistics of 1972.

Figure 1.1



In this figure, years (A), cases pending trial including from previous year (B), cases compounded (or) with drawn (C), cases convicted (D), Cases acquitted (E), total number of cases left untried at the end of the year (F) were represented and its relation is found as .

B>F>E>D> C

The difference between B & F is little which shows the disposal percentage which is due to the reason of uncontrolled crime rate resulting from less number of convictions. Disposal percentage of crimes would be increased only by adopting rectifications of present defects in prosecution.

Reasons for acquittals : Generally acquittals/discharges/ are rooted in two ways

- I) Basing on false complaints.
- II) Basing on failure of prosecution in proving the guilt of accused.

Basing on false complaints: False complaints can be identified by police at the stage of investigation. But it is not credible to rely upon police reports in all the cases, in some cases though the complaint referred as false, it can be entertained by the court by way of petition of protest for rendering justice when the report of police seems to be false in the view of the court. So the report of police is only a conclusion arrived at by police but not the court.

After the charge sheet is filed U/S 173 (2) Cr P C court will apply its mind upon the facts of the case by way of cognizance in such a scenario prosecutor will represent the case of prosecution, accused can bring the lacunas of prosecution to the notice of court for wriggling out from clutches of prosecution, but the only embargo against the accused is, he should not bring his defense or any material other than filed in police report. If any other evidence is allowed by the court at this stage then it would become a mini trial⁵. Facts are of two types 1) Facta probanda i.e facts of the case, the facts which constitute the case 2) Facta probantia i.e evidentiary facts which are useful to prove the fact probanda . At the time of taking cognizance court considers the facta probanda i.e whether there is any case prima facie or not If court considers upon the arguments of prosecutor and defense counsel that there was no case against accused then he would be discharged from prosecution. Generally this is the stage not to entertain any harassive complaints against an innocent accused. This provision is based on the legal maxim "ACTIO DATER DEMINIFI CATO" remedy is given to injured but not ill-motivated.

ii) Basing on failure of prosecution in proving the guilt of accused.

Proving of the guilt of an accused is an important and crucial task of the state in the criminal prosecution, in one word it is too sensitive because it is subjected to some riders which are

- 1) Proving of guilt of an accused beyond all reasonable doubts
- 2) Prosecution should stand on its own legs
- 3) Silence is a right of accused⁴
- 4) Benefit of doubt always favors the accused...

5) When two probabilities are projected upon the facts of trial , court always adopt accused favored probability. etc

Generally investigation is conducted by police then case in court is represented by prosecutor. The negligence in these two authorities would defeat the rights of victim. The provision of sec 301 Cr P C rectifies the lacuna to some extent because it is operative from the stage of inquiry and trial but not from investigation.

Sec 301 Cr P C : This Section provides that Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear without any written authority before any court in which that particular case is under inquiry, trial or appeal. Sub-section 2 provides that if any private person instructs a pleader to prosecute any person in any court, the public Persecutor in charge of the case shall conduct the prosecution and pleader so instructed shall act therein under the direction of public Prosecutor and may with the permission of the court submit written arguments after the evidence is closed in the case¹⁷.

BACK GROUND OF INCORPORATION OF SEC 24 (8) CR P C:

In order to bring changes in the criminal justice system, Government of India appointed a committee in 2003 under the Chairmanship of Hon'ble Justice Dr. V.S.Malimath . This committee analyzed many aspects of criminal proceedings under the name of "CRIMINAL JUSTICE SYSTEM" Some opinions of the committee in the arena of Victimology are:

1. Apart from the main functionaries of the Criminal Justice System, others who have a stake in the system are the victims, the society and the accused. Other players are the witnesses and the members of the general public⁶.
2. The victim whose rights are invaded by the accused is not accorded any right to participate except as a witness. The system does not afford him any opportunity to assist the court such as adducing evidence or putting questions to the witnesses. The system is thus utterly insensitive to the rights of the victim. The focus is all on the accused and none on the victim. The system has denied itself the benefit of this important source⁷.
3. The victim may be made a party to assist the court in discovering truth. He may be permitted to put questions or suggest questions to be put by the court to the witnesses produced by the parties. He can also point out the availability of other evidence that would assist the court in discovering truth. On the victim furnishing such information the court may cause production of such evidence as it considers necessary to discover truth⁸.
4. Active participation of the victim during investigation would be helpful in discovering truth. He can assist investigation in finding out the real offender and in collecting evidence to prove the commission of the offence by the assailant. He can also offer suggestions for proper investigation of the case. When the investigation proceeds on wrong lines the victim can move the court for appropriate directions to ensure proper investigation of the case⁹.
5. Participation of the victim will also assist the court in exercising its discretion in regard to grant or cancellation of bail. The victim will also have opportunity to adduce evidence in regard to his loss, pain and suffering and assist the court in determining the quantum of compensation. In cases where prosecution seeks to withdraw from the case, the victim would be in a position to assist the court in proper exercise of its discretion and may even offer to take the responsibility of continuing the prosecution. Presence of the victim before the court would also facilitate in the matter of compounding or settlement of the case¹⁰.
6. The victim should have the right to be represented by a lawyer. If the victim is an indigent person and is not in a position to engage a lawyer, the State should provide him a lawyer. When the State has an obligation to provide a lawyer to the accused, there is no good reason why the victim should not be provided a lawyer at the cost of the State¹¹.

7. The victim or his representative who is a party to the trial should have a right to prefer an appeal against any adverse order passed by the trial court. In such an appeal he could challenge the acquittal, or conviction for a lesser offence or inadequacy of sentence, or in regard to compensation payable to the victim. The appellate court should have the same powers as the trial court in regard to assessment of evidence and awarding of sentence¹²

The said committee enlarged the scope of participative role of victim in the criminal proceedings contrasted to the scenario that existed prior to the Amendment of 2008, basing on these recommendations Law commission drafted 154 and 177 reports. Hon'ble Justice Malimath Committee's report and Law commission reports became an under pinning to Amendment brought in to the force in 2008 (Act No 5 of 2009).

Basing on the above recommendations, Law Commission of India has given the importance to the victim in criminal proceedings by its 154 and 177 reports. Accordingly there was an amendment in Cr.P.,C 1973 (Act 5 of 2009) was brought in to force with the following objects and the reasons.

STATEMENT OF OBJECTS AND REASONS:- The need to amend the Code of Criminal Procedure, 1973 to ensure fair and speedy justice and to tone up the criminal justice system has been felt for quite sometime. The Law Commission has undertaken a comprehensive review of the Code of Criminal Procedure in its 154th report and its recommendations have been found very appropriate, particularly those relating to provisions concerning arrest, custody and remand, procedure for summons and warrant- cases, compounding of offences, victimology, special protection in respect of women and inquiry and trial of persons of unsound mind. Also, as per the Law Commission's 177th report relating to arrest, it has been found necessary to revise the law to maintain a balance between the liberty of the citizens and the society's interest in maintenance of peace as well as law and order. The need has also been felt to include measures for preventing the growing tendency of witnesses being induced or threatened to turn hostile by the accused parties who are influential, rich and powerful. At present, the victims are the worst sufferers in a crime and they don't have any worthwhile much role in the court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system. The application of technology in investigation, inquiry and trial is expected to reduce delays, help in gathering credible evidences, minimise the risk of escape of the remand prisoners during transit and also facilitate utilisation of police personnel for other duties. There is an urgent need to provide relief to women, particularly victims of sexual offences, and provide fair trial to persons of unsound mind who are not able to defend themselves."

As from the amendment Act 2008 there was an insertion made under sec 24 (8) Cr.P.C

"24. Public Prosecutors¹³.-(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government,

as the case may be.

(2).....

(3).....

(4).....

(5).....

(6).....

(7).....

(8)The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor."

15 [provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

As from the above discussion it was made clear that the newly inserted provision under 24 (8) Cr P C is meant for granting leave to the victim for assistance of prosecution, here the purpose of proviso is bidentate in nature, one is, all endeavors of victim to protect his/her rights invaded by the act of accused, second one is to bring the entire truth in to the notice of court for enabling it to do complete justice which is a mandate to uphold the real spirit of free and fair trail guaranteed under Art 21 of Constitution of India.

INTERPRETATION: The word "Prosecution" carries different meaning from "Prosecutor". Where the Primary is Genus and secondary is Specious. The Word Prosecution is not defined in any where under the Cr.P.C As per Webster Dictionary 3rd Edition it is defined as **"The carrying out of plan, project, or course of action to or toward a specific end"**. In view of the aforesaid definition the 'end' for which a plan or project is carried out is called prosecution. Prosecutor is an authority appointed by the state to represent the case on behalf of Victim in Court of Law. In respect of proviso to Section 24(8) Cr.P.C. prosecution in respect of an offence begin with putting the law into motion by any individual or sufferer of crime. The 'end' in a prosecution within the meaning of proviso to sub-section 8 of section 24 Cr.P.C. would be adjudication of guilt of an offender who is charged with commission of an offence in accordance with procedure established by law in a court constituted under the code. So the prosecution starts with giving information of commission of crime and continues during investigation or inquiry, trial of offender and if any appeal is filed finally ends by an order passed in appeal. This whole process is the part of fair trial inbuilt in Article 21 of Constitution¹⁸.

Newly inserted amended provision of Sec: 24(8) Cr P C is a proviso it renders a different meaning from the section. At this juncture the legal definition of "PROVISO" is pertinent to know.

"The word used in introducing a proviso Ordinarily it signifies or expresses a condition ; but this is not invariable, for, according to the context, it may import a covenant, or a limitation or qualification, or a restraint, modification, or exception to something which precedes¹⁴.

In regard to the insertion of proviso in statute book and held; 'A proviso may either qualify or except certain provisions from the main provision; or it can change the very concept of the intendant of the main provision by incorporating certain mandatory conditions to be fulfilled; or it can temporarily suspend the operation of the main provision. Ultimately the proviso has to be construed upon its terms. Merely because it suspends or stops further operation of the main provision, the proviso does not become invalid. The challenge to the validity of the proviso is therefore rejected¹⁵

In proviso added to Section 24(8) Cr.P.C the word used are "assist the prosecution" and not to 'assist the public Prosecutor' as mentioned in Section 301 Cr.P.C. There is difference in the scheme of two sections. From perusal of Sub-section 2 of section 301 Cr.P.C. made it clear that if in any case private person instructs a pleader to prosecute any person in any court even though the Public Prosecutor in charge of case shall conduct the prosecution and the pleader instructed shall act therein under the directions of the Public Prosecutor. Up to this stage no permission of court is needed for appointment of pleader by a private person. The permission is only required to the pleader if he want to file written argument in the case. But the role of the Victim is not wide enough to participate in the criminal proceedings of a case. As a result of which all the facts embodied the victim are not effectively presented before the Court¹⁹.

Section 301 Cr.P.C. has not been amended vide Act No.5 of 2008. The insertion in the statute book ,the proviso to Section 24 (8) added by Act No.5 of 2008, whether in any way, affects the provision of section 301, is sole question for consideration before the Court. Proviso added to section 24(8) Cr.P.C. provides that victim defined in Section 2(wa) may be

permitted to engage an advocate of his choice to assist the prosecution under this sub-section. Sub-section 8 provides appointment of Special Public Prosecutor, different from Public Prosecutor appointed under Section 7 of Sub-section 24 of Cr.P.C. The basic distinction drawn in the statute by introducing the proviso that if the victim defined under Section 2(wa) Cr.P.C. is permitted to engage a lawyer he will acquire status of Special Public Prosecutor subject to riders imposed under the proviso²⁰.

At this point it is also essential to know the difference between Public Prosecutor and Special Public Prosecutor (SPP).

“By practice, by virtue of the appointment made in Section 24(1) of the Code, the Public Prosecutor attached to that Court would prosecute the case. But, a Special Public Prosecutor appointed under Section 24(8) of the Code to a case and not to a Court²¹.

As from newly inserted amended provision of Sec: 24(8) Cr P C an advocate would acquire the status of special public Prosecutor(SPP). Public prosecutor can be attached to a court, he/she is appointed by state to represent the case of state without any written authority where as Special Public Prosecutor (SPP) is attached with a case he will follow the case even in revisionary court (or) Appellate court. Hence the newly inserted amended provision of Sec: 24(8) Cr P C was inserted under Sec 24(8) Cr P C because the engaged advocate would be attached to case and his role is in close proximity with the Special Public Prosecutor (SPP). Therefore newly inserted amended provision of Sec: 24(8) Cr P C inserted under sec 24(8) but not elsewhere. In order to get clear idea about sec 24 (8) and newly inserted amended provision of Sec: 24(8) Cr P C the following differences are required to be looked in.

TABLE 1.2 DIFFERENCE BETWEEN SEC 24(8) CR P C AND NEWLY INSERTED AMENDED PROVISION OF SEC: 24(8) CR P C:

S.No	Sec 24(8) Cr P C	Insertion portion of Sec 24(8) CrPC by way of Amendment Act 2008
1	This section came in to force by Act No 45 of 1978 w.e.f 18-12-1978	This insertion of provision was brought on the statutory book by Act No 5 of 2008 w.e.f 31-12-2009
2	It deals with appointment of Special Public Prosecutor (SPP)	It deals with engagement of an Advocate counsel to assist the prosecution
3	Central (or) state Government appoints SPP	Court grants leave for engaging Advocate Counsel.
5	Minimum 10 years of experience as an Advocate is an essential requisite for appointment of SPP	Such requisite is not essential.
6	Remuneration is given by State	Remuneration is given by Victim
7	Appointment of SPP is complex in nature	Appointment is less complex when compared to SPP
8	He is answerable to State	He is not answerable to state
9	Generally his role starts from inquiry and ends by appeal, if any	His role starts even from investigation and ends by appeal if any. If State does not prefer an appeal Victim is entitled to file appeal U/S 372 Cr P C;
10	It addresses the state role in criminal prosecution.	It addresses the Victim's role in criminal prosecution.

11	SPP is appointed for one case (or) Class of Cases by State.	Advocate is engaged by victim on granting of leave by the Court, He is confined to that particular case only but not in any class of cases.
12	His appointment is on necessity	His engagement is on Discretion of the Court.

Sec: 24(8) Cr P C is an extended form of sec 301 Cr P C. There is no confliction between them, So the letter and spirit inducted in proviso added to sub-Section 8 of Section 24 of the Cr.P.C. cannot be diluted by saying that no amendment has been incorporated in Section 301 Cr.P.C.

In Section 301 Cr.P.C there seems no previous permission to engage a private pleader by any private person even if he has no personal interest. The permission is required only if he intends to file the written argument.

The Public Prosecutor simply conduct the trial with sense of detachment whereas the victim remains attached with his case and ventilates his grievance because a decision given in the matter may not have any impact upon Public Prosecutor but it affects the victim. Hon'ble Justice M M Sundaresh analysed the sec 301 & 24 (8) Cr P C in Sathyavani Ponrani vs Samuel Raj Others CRL.O.P.(MD)NO.5474 OF 2010.

The Provision under Section 24(8) and Section 301 of the Code of Criminal Procedure are rather complimentary to each other rather than conflicting. Proviso to Section 24(8) of the Criminal Procedure Code is in other words an expansion of Section 301 of the Code of Criminal Procedure. Both proviso under Section 24(8) and Section 301 Cr.P.C. will have to be read together. Engaging of an advocate should only mean "to have an effective assistance". That is a reason why the word 'advocate' has been incorporated under Section 24. The definition of a 'pleader' is wider which has to be read in the context of Section 301 Cr.P.C. and the definition word "advocate" would mean an active participation in the prosecution through a counsel. Therefore in order to appreciate the same this Court will have to look into the object and reasons as well as a simple interpretation of the provisions. The legislature has taken into consideration of Section 301 Cr.P.C. while introducing the proviso to Section 24(8)¹⁶.

TABLE 1.3 : The difference between sec 301&sec 24(8) Cr P C:

S.no	Sec 301 Cr P C	Newly inserted amended provision of Sec : 24(8) Cr P C
1	It comes under Chapter XXIV of Cr.P.C i.e General Provisions As To Inquiries And Trials.	It comes under Chapter II of Cr.P.C i.e Constitution Of Criminal Courts And Offices.
2	To assist the prosecutor	To assist the prosecution
3	The word Instruct has less magnitude when compare to the word "engage"	The word "engage" has got a wider import than the word instruct
4	Sec 24 (8) operates from investigation where as sec 301 operates from inquiry.	Proviso to Section 24(8) of the Criminal Procedure Code is in other words an expansion of Section 301 of the Code of Criminal Procedure.
5	It speaks about the instructing a pleader	Proviso speaks about engaging an advocate.
6	The power of the Public Prosecutor is to conduct the prosecution.	An advocate engaged by a victim shall be allowed to supplement the conducting of the case by the Prosecutor.
7	It is applicable in Post cognizance stage i.e. in Inquiry and Trail	It is applicable even in pre cognizance stage i.e. in Investigation, Inquiry and Trial Sathyavani Ponrani vs Samuel Raj Others

8	Prior permission is not required unless written arguments after completion of the evidence are to be filed.	Initially prior permission (or) Leave from court is required.
9	Supportive role of Public Prosecutor.	Participative role in criminal proceedings
10	Pleader role is Single dimensional i.e assist the Public prosecutor	Advocate role is tri dimensional 1) Assist the Victim who engaged him to assist the prosecution. 2) Assistance to the Public Prosecutor 3) Assistance to the court being the officer of the court.
11	Victim's right to raise objections in granting of Anticipatory Bail is not allowed under this section	Victim's right to raise objections in granting of Anticipatory Bail is allowed under this section
12	Any person may instruct the pleader, Hence the participation of victim is considered as participation of "Any Person", So the role is extended to assistance to the Public Prosecutor.	Only Victim is competent to file this application, So the direct participation in the criminal proceedings.
13	Any person includes any other person acquainted with the facts of case shall have a role to bring the facts to the notice of court for enabling the court to render complete Justice because crime is also against the society.	Only victim is entitled to operate the provisions for redressal.
14	Public spirited enactment	Victim spirited enactment

Court can also exercise sec 302 Cr P C for keeping the prosecution on correct lines of law. The scope of sec 302 is that allowing any person to conduct prosecution, is meant for Magisterial courts and the Magistrate may, therefore, permit any person to conduct prosecution, the only rider being that the Magistrate cannot give such permission to a police officer below the rank of Inspector; but the person, who conducts prosecution in a Magisterial Court, need not necessarily be a Public Prosecutor"

Conclusion : Many modes of strengthening prosecution are provided under Law to protect the rights of parties in criminal proceedings. If lacunas are observed in Investigation (or) trial conducted by prosecutor can be rectified by engagement of an advocate by the leave of court. There should be an awareness be required in society to make use of said provision in an effective implementation of rights guaranteed under constitution of India. Government as well as legal literacy camps conducted by courts should give an imperative action in awakening the people of society to recourse the provisions and to observe the proceedings to be completed in tune with the Article 21 of Constitution of India.